1   GERALD K. CARROLL, STATE BAR NO. 142054
    KENNETH BERLAND, STATE BAR NO. 250255
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    450 Sansome Street, Suite 700   *E-Filed 4/21/09*
3   San Francisco, CA 94111
    Tel: (415) 248-3930
4   Fax: (415) 248-3933

5   Attorney for Defendant
    LARRY SPENCER CONSTRUCTION

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8   UNITED STATES DISTRICT COURT

9   NORTHERN DISTRICT OF CALIFORNIA

10   SAN JOSE DIVISION

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12 KATHLEEN VENTIMIGLIA, individually, and) CASE NO. 5:07-CV-5481 RS
    as the Guardian Ad Litem for STEPHEN   )
13 VENTIMILIA and KELLIE VENTIMILIA,   ) STIPULATION AND ~~PROPOSED~~
) ORDER FOR A JUDICIALLY ISSUED
14   Plaintiffs,   ) SUBPOENA TO NATIONAL
) PERSONNEL RECORDS
15   v.   )
)
16 UNITED STATES OF AMERICA,   )
    CHAMBLIN-LANDES CONSTRUCTION,   )
17 INC., a California corporation; WWD   )
    CORPORATION, a California corporation;   )
18 DAVID FULLER, individually; JENNIFER   )
    RUDOLPH, individually; LARRY GABRIEL,   )
19 individually; LARRY SPENCER   )
    CONSTRUCTION; and DOES 1 to 50,   )
20 inclusive,   )
)
21   Defendants.   )
    _____)

22

23   IT IS HEREBY STIPULATED by and between plaintiffs, Kathleen Ventimiglia,

24 individually and as Guardian Ad Litem for Stephen Ventimilia and Kellie Ventimilia and

25 defendant, Larry Spencer Construction, as follows:

26   1.   Larry Spencer Construction caused a subpoena to be issued to National Personnel

27 Records seeking records regarding employment of Joseph Ventimiglia (the "Subpoena") as

28 follows:

(left margin, vertical text) HARDIMAN & CARROLL — 450 Sansome Street, Suite 700 — San Francisco, CA 94111 — Tel: (415) 248-3930 Fax: (415) 248-3933

1 Any and all employment records, including all writings, as defined below in

2 Exhibit A, regarding or making reference to: Mr. Joseph Ventimiglia, deceased;

3 Date of birth 10/02/1953; Soc. Sec. No. 545-88-8653.

4 Exhibit A: "Writing" means handwriting, typewriting, printing, photostating,

5 photographing, photocopying, transmitting by electronic mail or facsimile, and

6 every other means of recording upon any tangible thing, any form of

7 communication or representation, including letters, words, pictures, sounds, or

8 symbols, or combinations thereof, and any record thereby created, regardless of

9 the manner in which the record has been stored. Writing includes all electronic

10 communications, namely, email.

11 TO INCLUDE RECORDS FROM THE NAVAL POSTGRADUATE SCHOOL

12 FIRE DEPARTMENT LOCATED AT 1399 CUNNINGHAM ROAD IN

13 MONTEREY, CALIFORNIA.

14   2.   The Subpoena was issued by counsel for Larry Spencer Construction. The

15 National Personnel Records responded that the Privacy Act, 5 USC § 552a(b)(11), requires a

16 "judicially-issued subpoena" signed by a Judge, and not the Clerk, to produce the requested

17 documents. See also 5 C.F.R. § 297. As such, the National Personnel Records responded that it

18 would not produce the requested documents unless the Subpoena was issued by a Court of

19 competent jurisdiction.

20   Therefore, there being no objections to the National Personnel Records producing the

21 requested records, it is agreed by and between plaintiffs and defendant, Larry Spencer

22 Construction, that the Court may issue a subpoena upon the National Personnel Records, as

23 required by the Privacy Act, 5 USC § 552a(b)(11) requesting the records originally requested in
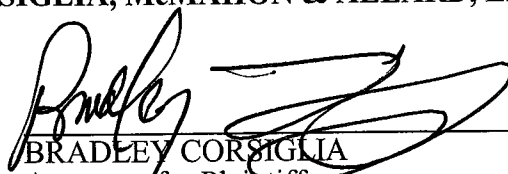
24 the Subpoena, detailed above.

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STIPULATION AND ~~PROPOSED~~ ORDER FOR A JUDICIALLY ISSUED SUBPOENA TO NATIONAL
PERSONNEL RECORDS

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1   Dated: April 14, 2009   **CORSIGLIA, McMAHON & ALLARD, LLP**

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3   By:

4   BRADLEY CORSIGLIA
                              Attorneys for Plaintiffs
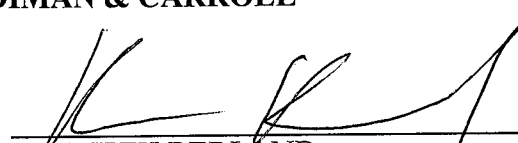
5   KATHLEEN VENTIMIGLIA, individually and as
                              the Guardian Ad Litem for STEPHEN
                              VENTIMILIA and KELLIE VENTIMILIA

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7   DATED: April 3, 2009   **HARDIMAN & CARROLL**

8

9   By

10   KENNETH BERLAND
                              Attorney for Defendant
                              LARRY SPENCER CONSTRUCTION

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14   **ORDER**

15   Pursuant to the above Stipulation and as Required by 5 USC § 552a(b)(11) it is hereby

16 ORDERED:

17   1.   The Court will issue a subpoena to the National Personnel Records which

18 requests the following records signed by a Judge of the Northern District of California (a

19 proposed subpoena is attached hereto as Exhibit "A"):

20   Any and all employment records, including all writings, as defined below in

21   Exhibit A, regarding or making reference to: Mr. Joseph Ventimiglia, deceased;

22   Date of birth 10/02/1953; Soc. Sec. No. 545-88-8653.

23   Exhibit A: "Writing" means handwriting, typewriting, printing, photostating,

24   photographing, photocopying, transmitting by electronic mail or facsimile, and

25   every other means of recording upon any tangible thing, any form of

26   communication or representation, including letters, words, pictures, sounds, or

27   symbols, or combinations thereof, and any record thereby created, regardless of

28   the manner in which the record has been stored. Writing includes all electronic

STIPULATION AND ~~PROPOSED~~ ORDER FOR A JUDICIALLY ISSUED SUBPOENA TO NATIONAL
PERSONNEL RECORDS

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1 communications, namely, email.

2 TO INCLUDE RECORDS FROM THE NAVAL POSTGRADUATE SCHOOL

3 FIRE DEPARTMENT LOCATED AT 1399 CUNNINGHAM ROAD IN

4 MONTEREY, CALIFORNIA.

5

6 IT IS SO ORDERED.

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8 DATED: _____4/21_____, 2009

9 JUDGE OF THE NORTHERN DISTRICT
   OF CALIFORNIA

10 RICHARD SEEBORG
    UNITED STATES MAGISTRATE JUDGE

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STIPULATION AND ~~PROPOSED~~ ORDER FOR A JUDICIALLY ISSUED SUBPOENA TO NATIONAL PERSONNEL RECORDS

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